IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 3307/2006
(Mahi Ram Vs. State of Rajasthan & Ors.)

Date of Order : 21/03/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Pradeep Choudhary for the petitioner.
Mr. K.L.Thakur, Additional Advocate General for respondents.

BY THE COURT:-

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks a direction to the respondents to consider his case and appoint him on the post of Constable (G.D.).

The facts and circumstances giving rise to the instant writ petition are that the respondent No.2 issued an advertisement Annex.1 dated 14.6.2005 inviting applications from the eligible persons for appointment on the post of constable (General Duty, Band, Horse Rider and Operator). The petitioner finding himself eligible submitted application for appointment on the post of Constable (G.D.) vide Annex.2. The petitioner appeared in the examination and thereafter he was

called to appear in the physical test/ interview vide call letter dated 24.2.2006 Annex.3. The petitioner appeared in the physical test held on 12.3.2006 and on 13.3.2006 he was declared passed and the result thereof was published in the newspaper vide Annex.4. However, the petitioner was not issued the appointment letter and as such has not been appointed, therefore, he sent representations vide Annex.5 and Annex.6. Despite representations, the respondents did not provide the petitioner appointment and hence this writ petition.

I have heard learned counsel for the parties.

A reply to the writ petition has been filed by the respondents stating therein that the petitioner is not eligible to be appointed on the post of constable for the reason that a criminal case is pending against the petitioner before the competent Court of law at the time of submitting the application form on 13.7.2005 which the petitioner has deliberately concealed and did not disclose in the application form and therefore, the petitioner has deliberately concealed the material facts dis-entitling him for appointment on the said post. Though the petitioner has tried to make out a case subsequent to the submission of the application that he has sent a letter through UPC to the Supdt. Of Police, Sirohi intimating the pendency of the criminal case, but the respondents specifically came with a case that no such letter was ever received by the Supdt. of

Police, Sirohi and have come with a case that sending of letter by UPC is only an after thought and in order to over reach the deliberate concealment made by the petitioner himself.

Even the petitioner in the writ petition has stated that he sent the representation by registered post. There was no occasion for the petitioner having sent such a communication by UPC. This clearly goes to show that no such intimation was sent by the petitioner to the Supdt. of Police, Sirohi. It has also been specifically denied by the respondents of having received any such communication from the petitioner. Be that as it may. It is a fact that the petitioner has concealed the material fact at the time of submission of the application form knowing well that if he discloses the fact that there is pendency of criminal case against him, he would not be entitled to be considered and therefore, such a serious act of concealment of material facts disentitles the petitioner for consideration and appointment.

Learned Deputy Government Advocate has relied on decisions of Hon'ble Supreme Court in Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar (1996) 11 SCC 605 and a Full Bench decision of this Court in Dharampal Singh Vs. State of Rajasthan and Ors. 2000 (2) WLC (Raj.) 400, in Ashwani Kumar Vs. Union of India and Ors. 2001 Western Law Cases (Raj.) UC, 548.

In Delhi Administration through its Chief Secretary

and Others Vs. Sushil Kumar (supra) Hon'ble Supreme Court held that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though the respondent was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable in the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences.

In Dharampal Singh Vs. State of Rajasthan and Ors. (supra) the Full Bench of this Court had considered a large number of judgments of the Hon'ble Supreme Court including Delhi Administration Vs. Sushil Kumar (supra) and held that suppressing such a material information amounts to making an attempt to get employment by misrepresentation/ fraud and in such a case, the suppression of material information itself

amounts to moral turpitude and it becomes immaterial whether the delinquent was involved in a criminal case involving moral turpitude or not. Particularly, for seeking employment in a disciplined force, such an attempt has to be dealt with seriously.

The expression 'moral turpitude' came to be considered by Hon'ble Supreme Court in Allahabad Bank Vs. Deepak Kumar (1997) 4 SCC 1 and the Hon'ble Supreme Court approved the following observations made by the Allahabad High Court in Baleshwar Singh Vs. District Magistrate and Collector, AIR 1959 All. 71:-

> "The expression 'moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man."

Learned counsel for the petitioner has relied on a decision of Hon'ble Supreme Court in Commissioner of Police, Delhi Vs. Dhaval Singh AIR 1999 SC 2326 wherein Hon'ble Supreme Court observed as under :-

> "That there was an omission on the part of the respondent to give information against the relevant

> column in the Application Form about the pendency of the criminal case, is not in dispute. The respondent, however, voluntarily conveyed it, on 15.11.1995, to the appellant that he had inadvertently failed to mention in the appropriate column regarding the pendency of the criminal case against him and that his letter may be treated as "information". Despite receipt of this communication, the candidature of the respondent was cancelled. A perusal of the order of the Deputy Commissioner of Police cancelling the candidature on 20.11.1995 shows that the information conveyed by the respondent on 15.11.1995 was not taken note of. It was obligatory on the part of the appellant to have considered that application and apply its mind to the stand of the respondent that he had made an inadvertent mistake before passing the order. That, however, was not done. It is not as if information was given by the respondent regarding the inadvertent mistake committed by him after he had been acquitted by the trial Court it was much before that. It is also obvious that the information was conveyed voluntarily. In vain, have we searched through the order of the Deputy Commissioner of Police and the other record for any observation relating to the information conveyed by the respondent on 15.11.1995 and whether that application could not be treated as curing the defect which had occurred in the form. We are not told as to how that communication was disposed of either. Did the competent authority ever have a look at it, before passing the order of cancellation of candidature? The cancellation of the candidature under the circumstances was without any proper application of mind and without taking into consideration all relevant material. The tribunal, therefore, rightly set it aside. We uphold the order of the Tribunal, though for slightly different reasons, as mentioned above."

In the instant case, it has been established from the reply affidavit and even otherwise that the petitioner has concealed the material fact of pendency of criminal case against him in the application form which in clear terms requires for a candidate applying for the post of police constable and this fact

has not been controverted by the petitioner by a rejoinder affidavit. From the material available on record and the reply filed by the respondents it is clear that a first information report No. 526 was lodged against the petitioner on 6.12.2003 under Sections 448 and 379 IPC at Police Station, Mahamandir, Jodhpur. Yet another FIR No. 155 was registered on 14.8.2005 against the petitioner under Sections 341, 323 and 379 IPC at Police Station, Mandore, Jodhpur. However, ultimately a challan was filed for the offences under Sections 341, 323/41 IPC and thus material facts un-disputably have not been disclosed by the petitioner in the application form which otherwise in clear terms requires to disclose about the registration of the criminal case against the person applying for the post, the case number, details thereof including the FIR number, Police Station and the name of the Court in which the criminal case is pending. Thus, the things were very much clearly known to the petitioner, yet he deliberately concealed the same and therefore, in my view, the decision relied on by learned counsel for the petitioner turns on its own facts and is of no help to him. In that case before the case of the respondent therein was considered by the authorities, the respondent therein voluntarily conveyed to the authorities that he had inadvertently failed to mention in the appropriate column regarding pendency of the criminal case against him requesting to treat the letter as information. In the

instant case, the petitioner has failed to establish having sent such a letter as noticed above. The respondents specifically denied on affidavit of having received any such letter which has not been controverted by the petitioner. Even otherwise, when the petitioner could send the representation by registered post, there could be no reason for the petitioner to convey such an information by UPC which the petitioner failed to establish. In the circumstances, therefore, in my view, the respondents were justified in not appointing the petitioner on the post of constable.

In this view of the matter, I do not find any merit in the writ petition and therefore, it is dismissed. There shall be no order as to costs.

(H.R.PANWAR),J.

rp